

REMARKS

By this Amendment, Applicants have added new claims 4-17. No new matter has been added. Claims 1-17 are pending in the application.

As an initial matter, during a telephone conversation with the Examiner conducted on March 21, 2005, the Examiner verified for Applicants' representative that the assertion concerning "a power steering system" was mistakenly included on page 5 of the Office Action dated February 28, 2005, and that it is not necessary for Applicants to respond to the assertion, since it is not related to the present application.

I. Rejections of Claims 2 and 3 under § 102(e) Based on Furakawa et al. or Levine

In the Office Action, the Examiner rejected claims 2 and 3 under 35 U.S.C. §102(e) as being anticipated by Furakawa et al. (U.S. Patent No. 6,644,272) or Levine (U.S. Pat. App. Pub. No. 2002/0016653). Applicants respectfully traverse each of those rejections of claims 2 and 3 because neither the Furakawa et al. reference nor the Levine reference discloses or suggests all of the subject matter recited in each of independent claims 2 and 3.

In order to anticipate a claim, "[a] reference must teach every element of the claim." M.P.E.P. § 2131. Since neither the Furakawa et al. reference nor the Levine reference discloses or suggests all of the subject matter recited in each of independent claims 2 and 3, those references, taken individually or in combination cannot anticipate those claims for the reasons explained in more detail below.

A. Independent Claim 2

Applicants' independent claim 2 recites a power management system for a machine including, among other recitations, "a power source . . . ; a transmission . . . ; and a control system in communication with the power source and the transmission, the control system being configured to modify a fuel supply limit, the fuel supply limit being regulated based on rack position and a load condition of the power source." Neither the Furakawa et al. reference nor the Levine reference discloses or suggests at least that subject matter recited in independent claim 2.

As an initial matter, Applicants respectfully note that the rejection statement has apparently disregarded at least a portion of the subject matter recited in Applicants' independent claim 2. In the Office Action, the rejection statement interprets the Furakawa et al. reference as disclosing, among other things, "a control system in communication with [a] power source and [a] transmission (see Furakawa et al., Fig.7 . . .); the control system being configured to modify a fuel supply limit (see Furakawa et al., Figs.6, 12, flow adjuster 10, 15:30-36, and 15:60 to 16:2 . . .)." Office Action at 3 (emphasis in original). The rejection statement, however, does not address the issue of whether the Furakawa et al. reference discloses the following subject matter recited in Applicants' independent claim 2: "a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source." Therefore, if the Examiner insists on maintaining the § 102(e) rejection of Applicants' independent claim 2 based the Furukawa et al. reference in a subsequent Office Action, Applicants respectfully request that the Examiner provide a complete explanation about how the Examiner is interpreting Furakawa et al. as disclosing the

above-outlined subject matter and make any Office Action issued non-final, so that Applicants will be provided with a fair opportunity to respond appropriately.

Notwithstanding the rejection statement's interpretation of Furakawa et al., the Furakawa et al. reference itself discloses a diesel engine 1 including a flow adjuster 10 for throttling exhaust flow, an intake heater 71 for heating intake air, a thermal medium circulator 72 for circulating a thermal medium to warm the diesel engine 1, a cylinder cut-off device 73 for conducting cylinder cut-off, and a fuel injection timing advancing device 74 for advancing timing for supplying fuel to a cylinder. The respective devices are actuated at least from pre-high-idle step to a neighborhood of high-idle condition, so that fuel combustion stabilization of the diesel engine 1 can be rapidly enhanced during a period where less fuel is supplied into the cylinder and fuel combustion time is short, thus reducing discharge of white smoke and the possibility of engine bunching.

The Furakawa et al. reference, however, does not disclose "a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source," as recited in Applicants' independent claim 2. The rejection statement refers to col. 15, lines 30-36, and col. 15, line 60, through col. 16, line 2, as apparently supporting its assertion that Furakawa et al. discloses a "control system being configured to modify a fuel supply limit . . ." Office Action at 3 (emphasis in original). Applicants respectfully note that the portions of Furakawa et al. referenced do not disclose the subject matter included in Applicants' claim recitation, "a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source." Rather, those portions of Furakawa et al. disclose an engine controller 60 that controls operation of an electric governor 1B. The electric

governor 1B adjusts fuel injection amount and fuel timing of a corresponding fuel pump. Nevertheless, the Furakawa et al. controller 60 does not regulate a fuel supply limit based on a rack position and load condition of a power source.

For at least the above outlined reasons, the Furakawa et al. reference does not disclose or suggest all of the subject matter recited in Applicants' independent claim 2. Therefore, Applicants' independent claim 2 is patentably distinguishable from the Furakawa et al. reference.

Concerning the Office Action's § 102(e) rejection of independent claim 2 based on the Levine reference, the rejection statement interprets the Levine reference as disclosing, among other things, "a control system in communication with [a] power source and [a] transmission (see . . . Levine Fig.5); the control system being configured to modify a fuel supply limit (see . . . Levine claims 11, 18)." Office Action at 3 (emphasis in original). For reasons at least similar to those mentioned above with respect to the § 102(e) rejection of independent claim 2 based on the Furakawa et al. reference, Applicants respectfully submit that the rejection statement does not address the issue of whether the Levine reference discloses "a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source." Therefore, if the Examiner insists on maintaining the § 102(e) rejection of Applicants' independent claim 2 based Levine in a subsequent Office Action, Applicants respectfully request that the Examiner provide a complete explanation about how the Examiner is interpreting Levine as disclosing the above-outlined subject matter and make any such Office Action issued non-final, so that Applicants will be provided with a fair opportunity to respond appropriately.

Notwithstanding the rejection statement's interpretation of Levine, the Levine reference itself discloses an electronic subsystem for automotive vehicles for overriding the manual control of the vehicles and substituting limited automatic control in response to onboard sensors detecting external and internal conditions that are in violation of the traffic laws or adverse to the normal manually-controlled operation of the vehicle. Levine discloses that traffic laws and regulations are digitally detected from the vehicle by wireless acquisition, and the vehicle is automatically controlled to insure compliance. The system detects adverse environmental conditions, including degraded traction and visibility, proximity of other vehicles and objects, uncontrolled vehicle movements, including skidding and fishtailing, and overrides the manual control of the vehicle to minimize the effects of such conditions. The system also provides for monitoring traffic flow along roadways and wirelessly regulating such flow.

The Levine reference, however, does not disclose or suggest "a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source." The rejection statement refers to claims 11 and 18 as apparently supporting its assertion that Levine discloses a "control system being configured to modify a fuel supply limit" Office Action at 3 (emphasis in original).

Applicants respectfully note that claim 11 recites, in pertinent part,

[a] road by road cellular system for regulating the maximum speed and acceleration-deceleration of a vehicle having a fuel control feed [including]. . . an onboard control system for the vehicle that is connectable to the vehicle fuel control feed for regulating the vehicle maximum speed, acceleration, and

stopping, . . . said control system responding when the content of said signs require stopping of the vehicle to override the manual control of the vehicle to stop the vehicle, and said control system responding when the vehicle speed exceeds the speed limit set forth on said signs to override the manual control of the vehicle and regulate its maximum speed and acceleration.

Claim 18 recites, in pertinent part,

[a] performance modifying subsystem for driver operated automotive vehicles that responds to driver controlled fuel flow to accelerate-decelerate the vehicle, comprising: sensor means onboard the vehicle for detecting a restrictive condition affecting the vehicle including one of a restrictive traffic regulation, an adverse environmental condition, and an uncontrolled movement of the vehicle, to generate an error signal, . . . a controller onboard the vehicle and connectable to the driver controlled fuel flow of the vehicle, said controller being energized by the error signal to modify . . . the fuel flow response of the vehicle corresponding to the detected condition, thereby to modify the acceleration-deceleration performance of the vehicle in response to the detected condition.

In other words, claims 11 and 18 of Levine disclose a vehicle controller for controlling fuel flow in response to the content of road signs including traffic regulations, an adverse environmental condition, and an uncontrolled movement of the vehicle. The Levine reference does not disclose, however, “a control system . . . , [wherein] the fuel supply limit [is] regulated based on rack position and a load condition of the power source,” as recited in Applicants’ independent claim 2. Therefore, the Levine reference does not disclose or suggest all of the subject matter recited in Applicants’ independent claim 2. As a result, independent claim 2 is patentably distinguishable from the Levine reference.

B. Independent Claim 3

Applicants’ independent claim 3 recites a method for operating a power management system including, among other recitations, “modifying a fuel supply limit being supplied to [a] power source based on rack position and a load condition of the power source.” For at least reasons similar to those outlined above with respect to independent claim 2, neither the Furakawa et al. reference nor the Levine reference discloses or suggests at least that subject matter recited in independent claim 3. Therefore, independent claim 3 is patentably distinguishable from those references.

II. Rejection of Claim 3 under 35 U.S.C. § 103(a) Based on Levine in view of Cochofel et al.

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Levine in view of Cochofel et al. (U.S. Pat. App. Pub.

No. 2001/0005803). Applicants respectfully traverse the rejection of independent claim 1 based on the Examiner's proposed, hypothetical combination of the Levine and Cochofel et al. references because the Office Action has failed to establish that independent claim 1 is *prima facie* obvious based on those references.

Under the guidance of the M.P.E.P., in order "[t]o establish a *prima facie* case of obviousness, . . . there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. § 2143. Furthermore, "[t]he teaching or suggestion to make the claimed combination . . . must . . . be found in the prior art, not in applicant's disclosure." Id. The M.P.E.P. further advises that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." Id. In addition, even if there is any suggestion or motivation to modify the reference or combine reference teachings, "the prior art reference (or references when combined) must teach or suggest all the claim limitations." Id. Applicants respectfully submit that the rejection statement's proposed, hypothetical combination of the Levine and Cochofel et al. references' disclosures lacks any legally sufficient suggestion or motivation to establish a *prima facie* case of obviousness. Further, even if for the sake of argument there is a suggestion or motivation make the rejection statement's hypothetical combination, the combination does not disclose or suggest all of the subject matter recited in Applicants' independent claim 1.

In the Office Action, the rejection statement concedes that the Levine reference does not disclose "a fuel supply limit being determined from a fuel curve associated with

the machine, wherein the control system is able to modify the fuel curve based on a load condition of the power source. Office Action at 4. The rejection statement thereafter asserts, however, that the Cochofel et al. reference “disclose[s] that limitation (see Cochofel et al., claim 20),” and concludes that “[i]t would have been obvious to . . . combine Cochofei [sic] et al. using a programmable controller to drive output power control based on changes in load, fuel, and speed.” Id. at 4-5.

Applicants respectfully disagree with the rejection statement’s unsupported conclusion at least because the rejection statement has not identified any suggestion or motivation to make the proposed, hypothetical modification to the Levine disclosure. Rather, the rejection statement merely identifies a portion of the Cochofel et al. reference that recites “electronic circuitry to interface with a vehicle engine to modify engine intake air/fuel ratio to modify the torque curve to adapt to changes in load, speed, and/or road condition.” That mere identification of a portion of Cochofel et al. does not provide any suggestion or motivation to a person having ordinary skill in the art to modify the Levine reference’s disclosure relating to an electronic subsystem for automotive vehicles for overriding manual control of the vehicle based on traffic laws.

Furthermore, even if for the sake of argument, there is a legally sufficient suggestion or motivation to make the proposed modification to Levine’s system, the rejection statement’s combination of the Levine and Cochofel et al. references does not disclose or suggest all of the subject matter recited in Applicants’ independent claim 1. For example, the combination of Levine and Cochofel et al. does not disclose or suggest “a control system in communication with [a] power source and [a] transmission, the control system being configured to determine a fuel supply limit associated with a

desired speed of the power source, the fuel supply limit being determined from a fuel curve associated with the machine, wherein the control system is operative to modify at least a portion of the fuel curve based on a load condition of the power source,” as recited in Applicants’ independent claim 1. In particular, neither the Levine reference nor the Cochofel et al. reference discloses or suggests a control system in communication with a transmission. Furthermore, neither the Levine nor the Cochofel et al. reference discloses or suggests a control system being configured to determine a fuel supply limit based on a fuel curve, wherein the control system is operative to modify a portion of the fuel curve. In contrast, the Cochofel et al. reference discloses modifying an air/fuel ratio to modify a torque curve, rather than determining a fuel supply limit based on a fuel curve and modifying the fuel curve. Therefore, even if for the sake of argument, there is a legally sufficient motivation or suggestion to make the rejection statement’s proposed, hypothetical modification Levine’s disclosure, the proposed modification does not result in all of the subject matter recited in Applicants’ independent claim 1 being suggested. As a result, the rejection statement fails to establish that Applicants’ independent claim 1 is *prima facie* obvious. Therefore, independent claim 1 is patentably distinguishable from the Levine and Cochofel et al. references.

III. Conclusion

As outlined above, independent claims 1-3 should be allowable. New claims 4-17 each depend from one of allowable independent claim 1-3. Therefore, each of those dependent claims should be allowable for the same reasons their

corresponding independent claim is allowable as well as by virtue of their recitations of additional novel and non-obvious subject matter.

Applicants respectfully request reconsideration of this application, withdrawal of the outstanding claim rejections, and the allowance of claims 1-17.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicants' undersigned attorney at 571-203-2739.

Applicants respectfully submit that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicants respectfully decline to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 6-0916.

Respectfully submitted,

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Dated: April 28, 2005

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